United Paperworkers International Union, AFL–CIO, CLC and its Local No. 987 (Sun Chemical Corporation of Michigan) *and* Thomas Henry Teall. Case 7–CB–9597

March 24, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On March 18, 1994, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondents, the General Counsel, and the Charging Party filed exceptions and supporting briefs. The Charging Party and the Respondents filed answering briefs, and the Respondents filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as further discussed below and to adopt the recommended Order as modified and set forth in full below.

For the reasons set forth in *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 119 S.Ct. 47 (1998), and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), revd. on other grounds sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated 119 S.Ct. 442 (1998), we adopt the judge's finding that the Respondents breached their duty of fair representation, in violation of Section 8(b)(1)(A) of the Act, by failing to inform Charging Party Thomas Henry Teall and other unit employees, whom the Respondents represented under a collective-bargaining agreement containing a union-security provision, of their rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), and *Communications Workers v. Beck*, 487 U.S. 735 (1988).[1] We also adopt the judge's finding that the Respondents unlawfully continued to charge Teall a service fee equal to full union dues and to spend a portion of his fee for purposes unrelated to their duties as the collective-bargaining representative, even after he had resigned his union membership and filed a *Beck* objection.[2]

In so finding, we agree with the judge that Teall's communications with the Respondents informed them that he was resigning his membership and that he intended to pay only the dues and fees required of a *Beck* objector. We recognize that Teall's March 1, 1993 letter might have caused some confusion as to whether it was his intent to resign from union membership altogether or simply to resign from the Local. In this regard, Teall was apparently confused about his relationship with the International, and he testified that he would have sent a similar letter to the International had he realized that he had to do so. The Respondents, however, did nothing to resolve the ambiguity. Instead, as the judge found, they failed even to acknowledge his plainly worded resignation from the Local. Having done nothing to inquire of Teall what his communications intended, the Respondents cannot now rely on their claimed confusion to avoid their responsibilities to him.

The Charging Party has excepted to the judge's finding that the contractual union-security clause was not per se unlawful and to his failure to order that the clause be removed from the parties' collective-bargaining agreement. The Charging Party contends that, by maintaining a union-security clause that requires unit employees to be members of the Union in good standing as a condition of employment, the Respondent misleads employees into thinking that they must actually join the Union and pay full dues and fees, rather than simply pay the dues and fees chargeable to *Beck* objectors. We find no merit in this contention, which the Supreme Court unanimously rejected in its recent decision in *Marquez v. Screen Actors Guild*, 119 S.Ct. 292 (1998). The Court observed that Section 8(a)(3) of the Act permits unions and employers to negotiate agreements that require union "membership" as a condition of employment for all unit employees. It held that a union does not violate its duty of fair representation by negotiating agreements that track the language of Section 8(a)(3) without explaining, in such agreements, that the Court has held that formal

[1] Thus, contrary to the judge, the violation we find is not premised on any ambiguity in the union-security clause, but on the Respondents' failure to tell employees of the statutory limits on union-security obligations. *Weyerhaeuser Paper Co.*, supra, 320 NLRB at 350.

The judge found that once a nonmember employee files a *Beck* objection, the union must establish a *Beck* procedure and notify the objector of his *Beck* rights. In *California Saw*, supra, the Board held that a union that represents employees subject to a union-security provision must notify them, when or before it seeks to obligate them to pay dues and fees, that they have the right to be or remain nonmembers and that nonmembers have the right (1) to object to paying for union activities that are not germane to the union's duties as bargaining agent and to obtain a reduction in dues and fees for such activities; (2) to be given sufficient information to enable them to decide intelligently whether to object; and (3) to be informed of any internal union procedures for filing objections. If an employee objects, he must be told of the percentage of the reduction, the basis for the calculation, and the right to challenge those figures. 320 NLRB at 233, 235 fn. 57. We disavow the judge's discussion to the extent it sets forth notice requirements that are inconsistent with those set forth in *California Saw*.

No exceptions were filed to the judge's finding that the Respondents failed to inform unit employees other than Teall of their *General Motors* and *Beck* rights.

[2] No exceptions were filed to the judge's finding that the Respondents used a portion of Teall's dues for purposes not germane to their role as collective-bargaining representative after he became a *Beck* objector.

We agree with the judge that the Respondents' collection and use of full service fees from Teall violated Sec. 8(b)(1)(A). We do not rely on his conclusion that that conduct also violated Sec. 8(b)(2). See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 330 (1991), cited in *Weyerhaeuser*, supra, 320 NLRB at 349 fn. 3.

union membership cannot be required[3] and that nonmembers cannot be charged dues and fees for nonrepresentational purposes over their objection.[4] The Court held that, by tracking the statutory language, a union-security clause incorporates all the refinements and rights that have become associated with that language under *General Motors* and *Beck*. The clause in question here contains "membership" language that tracks the provisions of Section 8(a)(3).[5] We therefore affirm the judge's finding that the union-security clause is not per se unlawful, and we shall not order that it be expunged from the parties' contract.[6]

Remedial Issues

Turning to remedial matters, we find that the judge properly required the Respondents to notify all unit employees of their *Beck* and *General Motors* rights.[7] We find no merit in the Respondents' argument that only Teall should be afforded *Beck* notice because the complaint did not request that other employees be similarly notified. Although it did not specifically request such notice to other employees, the complaint did seek "such other relief as may be just and proper to remedy the unfair labor practices . . . alleged." We find that requiring the Respondents to inform all unit employees of their *Beck* and *General Motors* rights is an appropriate remedial measure, and one which the Board has consistently imposed in cases in which unions have failed to provide such notice.[8]

We find merit, however, in the Respondents' contention that the judge improperly ordered them to reimburse Teall for all service fees collected since he became a nonmember objector. We agree that the Respondents were still entitled to collect fees for expenses related to representational activities. We shall modify the recommended Order and notice to require reimbursement only of fees determined to exceed the amounts that the Respondents could lawfully collect under *Beck*.[9]

We shall order the Respondents to notify in writing those employees whom they initially sought to obligate to pay dues or fees under the union-security clause on or after September 19, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint. With respect to any such employees who, with reasonable promptness after receiving their notices, elect nonmember status and file *Beck* objections with respect to any of those periods, we shall order that the Respondents, in the compliance stage of the proceeding, process their objections, nunc pro tunc, as they would otherwise have done, in accordance with the principles of *California Saw*. The Respondents shall then be required to reimburse these objecting nonmember employees for the reduction in their dues and fees, if any, for nonrepresentational activities that occurred during the accounting period or periods covered by the complaint in which they have objected.[10]

[3] *General Motors*, supra, 373 U.S. at 742.

[4] *Beck*, supra, 487 U.S. at 752–754.

[5] We recognize that the phrase "in good standing" does not appear in the provisos to Sec. 8(a)(3) and (b)(2). However, that phrase was in the union-security clause in *Marquez*, supra, and did not warrant a different result there.

[6] See *Association for Retarded Citizens (Opportunities Unlimited of Niagara)*, 327 NLRB No. 88, slip op. at 3 (1999). Because we find that the union-security clause is not unlawful, we find it unnecessary to pass on the Respondent's contention that Teall waived his right to challenge the clause by participating in collective-bargaining negotiations in which an identical provision was adopted.

[7] In addition to the initial *Beck* and *General Motors* notice which we will order for all bargaining unit employees, we find it appropriate to order the Respondents to provide Teall with the notice to objectors required under *California Saw*, supra, 320 NLRB at 233; see fn. 1, above.

[8] See, e.g., *California Saw*, supra, 320 NLRB at 261; *Opportunities Unlimited of Niagara*, supra, 327 NLRB No. 88, slip op. at 3,4. In any event, it is well established that in fashioning remedies for unfair labor practices, the Board is not limited by the arguments of the parties. See, e.g., *Nabco, Inc.*, 266 NLRB 687 fn. 1 (1983).

[9] See *Weyerhaeuser*, supra, 320 NLRB at 349 fn. 4. See also *Gilpin v. American Federation of State, County, and Municipal Employees*, 875 F.2d 1310, 1313–1316 (7th Cir. 1989); *Hudson v. Chicago Teachers Union Local No. 1*, 117 F.R.D. 413, 415 fn. 1 (N.D. Ill. 1987).

As the Charging Party notes, other courts have ordered unions to reimburse all dues paid by objectors where the union's procedures for informing employees of their *Beck* rights were inadequate. See, e.g., *Lowary v. Lexington Local Board of Education*, 854 F.2d 131 (6th Cir. 1988). However, *Lowary* and certain other decisions relied on by the Charging Party were decided on constitutional grounds and thus, as the Board held in *California Saw*, they are not controlling in cases arising under the Act, which are decided under a duty of fair representation analysis. 320 NLRB at 226–228.

In other contexts, as the Charging Party further notes, the Board and the courts have ordered refunds of all union dues to remedy certain violations. Those decisions, however, are distinguishable because they involved unions that, for various reasons, were not owed *any* dues by the employees in question. See, e.g., *Virginia Electric & Power Co. v. NLRB*, 319 U.S. 533, 539–545 (1943) (employer-dominated union); *Hermet, Inc.*, 222 NLRB 29 (1976) (minority union); *Typographical Union 16 (Continental Composition)*, 268 NLRB 347, 349 (1983) (unlawful union-security clause). Here, by contrast, the Charging Party was lawfully required under the contract to pay his share of representational expenses.

The General Counsel has excepted to the judge's failure to require the Respondents to maintain and preserve the records necessary to determine the amount of dues to be refunded to Teall. We find merit in that exception, and we shall modify the recommended Order accordingly.

[10] We shall confine the reimbursement remedy to employees who were initially subjected to union security on or after September 19, 1992, the beginning of the 6-month period preceding the filing and service of the charge. On the other hand, we shall order the Respondents to give notices to all bargaining unit employees irrespective of when they were initially subjected to union security. This remedial action is designed to ensure that all unit employees will have knowledge of their rights, for future exercise if they wish. The class to which notice is required is broader than the class for which make-whole relief is provided, consistent with the distinction made in Board practice between the obligation of a labor law violator to make whole victims of proven unfair labor practices and the violator's obligation to notify

The Charging Party contends that the judge erred in stating that the Respondents may notify unit employees that they have to pay initiation fees. The Charging Party argues that initiation fees are paid in order to attain union membership, and therefore that individuals who do not want to be union members cannot lawfully be charged such fees. We find no merit in that argument. Both Section 8(a)(3) and (b)(2) explicitly provide that unions may require employees to pay initiation fees under union security agreements. In holding that "'[m]embership' as a condition of employment is whittled down to its financial core," the Supreme Court in *General Motors* was referring to initiation fees as well as dues.[11] We therefore agree with the judge that the Respondents may notify unit employees that they are required to pay initiation fees.[12]

ORDER

The National Labor Relations Board orders that the Respondents, United Paperworkers International Union, AFL–CIO, CLC and its Local No. 987, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify unit employees, when they first seek to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Respondents' duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

(b) Failing to provide unit employees who have resigned their union memberships and filed *Beck* objections with information about the percentage reduction in dues and fees charged *Beck* objectors, the basis for that calculation, and the right to challenge those figures.

(c) Refusing to acknowledge Thomas Henry Teall's resignation from membership.

(d) Charging nonmember bargaining unit employees for nonrepresentational activities after they file *Beck* objections.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all bargaining unit employees in writing of their rights under *General Motors* to be and remain nonmembers and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to the Union's duties as bargaining agent and to obtain a reduction in dues and fees for such activities. In addition, the notice must include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) For each accounting period since March 1, 1993, provide Teall with information setting forth the Respondents' major categories of expenditures for the previous accounting year and distinguishing between representational and nonrepresentational functions.

(c) Acknowledge in writing Teall's resignation from membership and, as long as he is a nonmember objector, charge him only the portion of dues and fees representing his share of the Unions' expenditures for representational activities.

(d) Notify in writing those employees whom the Respondents initially sought to obligate to pay dues or fees under the union-security clause on or after September 19, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

(e) With respect to any employees who, with reasonable promptness after receiving the notices prescribed in paragraph 2(d), elect nonmember status and file *Beck* objections, process their objections in the manner set forth in the "Remedial Issues" section of this decision.

(f) Reimburse, with interest, Teall and any other nonmember bargaining unit employees who file *Beck* objections with the Respondents for any dues and fees exacted from them for nonrepresentational activities, in the manner set forth in the "Remedial Issues" section.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all records necessary to verify the amounts of back dues and fees to be paid to Teall and other nonmember bargaining unit employees covered by paragraph 2(f).

(h) Within 14 days after service by the Region, post at their business offices and local meeting halls copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondents to

employees of the rights that were violated. See *Opportunities Unlimited of Niagara*, supra at fn. 14.

[11] 373 U.S. at 742. The agency shop arrangement under consideration in *General Motors* included a provision that all employees pay the union's initiation fee. Id. at 741.

[12] Such notice must be consistent with the notice requirements set forth in *California Saw*. Of course, nonmember objectors like Teall cannot be charged any portion of the initiation fee that is spent for nonrepresentational purposes. *American Federation of Television & Recording Artists (KGW Radio)*, 327 NLRB No. 97, slip op. at 2 (1999).

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondents have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers, and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

WE WILL NOT fail to provide unit employees who have resigned their union memberships and filed *Beck* objections with information about the percentage reduction in dues and fees charged *Beck* objectors, the basis for that calculation, and the right to challenge those figures.

WE WILL NOT refuse to acknowledge Thomas Henry Teall's resignation from membership.

WE WILL NOT charge nonmember bargaining unit employees for nonrepresentational activities after they file *Beck* objections.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all bargaining unit employees in writing of their right under *General Motors* to be and remain nonmembers and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities. In addition, the notice will include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL, for each accounting period since March 1, 1993, provide Teall with information setting forth our major categories of expenditures for the previous accounting year and distinguishing between representational and nonrepresentational functions.

WE WILL acknowledge in writing Teall's resignation from membership and, as long as he is a nonmember objector, charge him only the portion of dues and fees representing his share of our expenditures for representational activities.

WE WILL notify in writing those employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after September 19, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

WE WILL process the *Beck* objections of any employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after September 19, 1992 who elect nonmember status and file objections with reasonable promptness after receiving notice of their right to so object.

WE WILL reimburse, with interest, Teall and any other nonmember bargaining unit employees who file *Beck* objections with us for any dues and fees exacted from them for nonrepresentational activities, for each accounting period since September 19, 1992.

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL–CIO, CLC, AND ITS LOCAL NO. 987

Howard Dodd, Esq., for the General Counsel.
Carl Bush, Esq., of Nashville, Tennessee, for the Respondents.
John C. Scully, Esq., of Springfield, Virginia, for the National Right to Work Foundation.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard December 9, 1993, in Muskegon, Michigan. Subsequent to an extension in the filing date briefs were filed by all parties. The proceeding is based upon a charge filed March 19, 1993,[1] as subsequently amended by Thomas Henry Teall, an individual. The Regional Director's complaint dated May 11, 1993, alleges that Respondent United Paperworkers International Union, AFL–CIO, CLC and its Local No. 987 violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by refusing to acknowledge Teall's resignation from membership in Respondents, failing and refusing to give him notice of his rights and information necessary and relevant for his exercise of his rights under *CWA v. Beck,* 487 U.S. 735 (1988), by failing to advise Teall and all other employees in the unit that they are not required to become or remain members of the Respondents as long as they are financial

[1] All following dates will be in 1993 unless otherwise indicated.

core members, and by continuing to collect and use Teall's service fees without giving the appropriate *Beck* notice and by using his service fee for purposes not germane to their role as the exclusive collective-bargaining representative.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, Sun Chemical Corporation of Michigan, is a corporation engaged in the manufacture and nonretail sale of organic pigment at Muskegon, Michigan, and it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside Michigan and at all times material is has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act and at all material times, the Respondent has been the exclusive collective-bargaining representative for a unit of all production and maintenance employees employed by the Employer at its Muskegon, Michigan facility, including the Charging Party.

II. THE ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent Union and the Employer have been parties to a collective-bargaining agreement which contains a union-security clause requiring the employees, including the Charging Party, to become and remain members in good standing in the Respondent as a condition of their employment. The union-security provision reads as follows:

> It shall be a condition of employment that all employees of the Company covered by this Agreement who are members of the Union in good standing on the effective date or execution date of this Agreement whichever is later, shall remain in good standing and those who are not members on the effective date of this Agreement shall, after one hundred-twenty (120) calendar days or any extension thereof following the effective or whichever is later, shall remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date or executive date, whichever is later, shall after one-hundred twenty (120) calendar days or any extension thereof following the beginning of such employment, become and remain members in good standing in the Union.

Teall has worked for the Employer for 10 years and he became a union member when he started. In 1992 he was defeated in a union election for the post of recording secretary. On March 1, he sent the following certified letter to the Local withdrawing from membership in the Respondents':

> At this time I am resigning from your local and requesting a withdrawal card from same.
>
> I am hereby giving written notice of termination of authorization to withhold from my pay any money to be paid to the local, except that portion as required by Federal or State law to retain gameful employment with Sun Chemical Corp.

He also hand-delivered a copy of this letter to the Local bargaining committee at the regular March membership meeting, the letter was forwarded to the International by Ed Leary (admitted agent of the Local), and thereafter, Dick Flowers (admitted agent of the International), phoned Teall on March 24 and told Teall that without regards to his withdrawal he would still be a member of Respondents and that the amount of his service fee would be the same as the regular dues paid by members.

Teall received no written communication from either the Local or the International and in late June he sent the following certified letter addressed to the Local:

> It is now about four months since the local received my letter of resignation, requesting a withdrawal card and giving written notice of termination of authorization to withhold money from my pay, except the portion as required by Federal or State law to retain gameful employment with Sun Chemical Corp.
>
> As of this date I have not received any formal notice from the local or the international regarding my resignation. Therefore, I am requesting, in writing, answers to the following:
>
> 1. Has my resignation been accepted?
> 2. What is the service fee?
> 3. How is the service fee figured?
> 4. Why you are still taking the full amount of union dues? Also, do you plan on returning the overcharges and when?

Again, no response was made by the Respondents.

Teall has always paid his dues to the Respondents through payroll deductions. The Respondents have continued to collect his service fee, even after resignation, via dues checkoff. The rate that has been deducted from his pay is the same now as it was prior to his resignation. this fee is the same as the regular dues paid by members. In November, Teall received a membership card from the International for the years 1994 and 1995.

Teall was never told by the Respondents that he has the right under *Beck* infra, to pay a reduced fee after he resigned, that he could object to the calculation of that fee or that he could demand an accounting of the disbursements of the Respondents to determine the appropriate service fee under *Beck*. Respondents presented no evidence to establish that is uses Teall's service fee exclusively for contract administration, grievance handling, or collective bargaining and they presented no evidence to establish that they have even established a *Beck* procedure.

The Respondents did, however, present an offer of proof regarding certain matters (regarding the Employer's progressive discipline system and the Union's asserted failure to support Teall), alleged to be relevant to Teall's motivation for his resignation.

Discussion

Here, the General Counsel has clearly established that the Charging Party sent a letter of resignation that was never recognized, that the Union never responded with any notice of his *Beck* rights, or information relative to the exercise of those rights and the Union never accounting for, or made any reduction of or reimbursement of dues withheld.

The Respondents' defense is based upon the arguments that (1) Teall's letter of resignation was unclear and lacked specificity; (2) that Respondents had no affirmative duty to provide *Beck* rights notice or information; (3) that because Teall was motivated by a strong desire to become a "free rider'' Respondents' owed him no fiduciary obligations; and (4) that Teall

waived any claim regarding the legality of the union-security clause because in the early 1980s he on behalf of the Union previously had negotiated and signed a prior collective-bargaining agreement containing the identical language.

Turning first to the latter defense it is clear that Teall's knowledge of this language in the 1980s is irrelevant since it did not become applicable to his situation until after *Beck* and his subsequent resignation and after the potentially illegality established after *Paramax*, infra, was decided.

I also find that Respondents' first defense is strained at best. It would take a particularly obtuse reading of Teall's communications with the Union to conclude anything other than that he was resigning his membership and did not want to pay any dues beyond that which he was obligated to (his service fee) for purposes of retaining employment under the union-security provision. To the extent that any ambiguity or lack of specificity remained, it was in areas within the control of the Respondents, Respondents had received adequate notice and the burden to respond, as well as the burden to clarify and provide information, shifted to the Union at both the Local and International level to appraise Teall of his rights or of their compliance.

Here, the Respondents merely stonewalled. They failed to respond or act upon the resignation, and failed to reduce the amount of dues to a level consistent with an appropriate service fee. Their failure to respond in any way and their failure to provide any information whatsoever is the equivalent of providing false and inaccurate information and, as discussed below, constitutes a failure of a union's responsibility to provide fair representation for all employees in a bargaining unit.

Just as a union may not discriminatorily deny a request for membership, *Scofield v. NLRB,* 394 U.S. 423, 430 (1969), a union cannot refuse to accept a resignation of membership, both where there is no union-security clause, *Electrical Workers IBEW Local 2088 (Lockheed Space Operations),* 302 NLRB 322 (1991), and where such a provision in a collective-bargaining agreement provides for union representation of all employees, *Pattern Maker v. NLRB,* 473 U.S. 95 (1985), and *Electrical Workers IUE Local 444 (Paramax Systems),* 311 NLRB 1031 (1993). Whereas *Lockheed Space* finds that the refusal to accept the revocation of all payroll deduction of union dues, the *Paramax* decision draws on the decision in *Beck*, supra, and *NLRB v. General Motors*, 373 U.S. 734 (1963), to find circumstances under which a failure to appraise unit employees that they need only tender applicable initiation fees to become and remain "member of the Union in good standing is improper because such a clause is ambiguous in that it fails to appraise employees of the lawful limits of their obligations."

Here, the same clause is under examination and here the Respondents have failed to appraise the Charging Party or other unit members of their lawful limits of his obligations under the *Beck* decision (see p. 748), to pay to the Union:

> Only those fees and dues necessary to "performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." [*Ellis v. Railway Clerks*], 466 U.S. [435], 448.

The Board's decision in *Paramax*, supra, issued in May 1993, concluded that the union-security clause in the underlying collective-bargaining agreement which contained a phrase requiring employees to be "members in good standing'' was not illegal per se. That phrase, however, was found to be ambiguous and subject to a reasonable interpretation which could cause employees to believe that they were required to become and remain members of a union, contrary to the holding in *General Motors*. Accordingly, the Board held that any union that maintains a union-security clause similar to the one in *Paramax* would breach its duty of fair representation and violate Section 8(b)(1)(A) of the Act if it failed to advise employees of their rights under *General Motors* to maintain employment by becoming a financial core member without being required to become or remain a member of the union.

Here, the underlying collective-bargaining agreement between Respondents and the Employer contains a union-security clause which requires employees to "become and remain members of the" Respondents, language that is virtually identical to that in *Paramax*. It is ambiguous and subject to a reasonable interpretation by employees that would lead them to conclude that they must become and remain members of the Respondents. Because of this ambiguity, the Respondents had and have a fiduciary duty to advise Teall and all other employees in the unit of their rights under *General Motors* and *Beck*. Neither the Local or the International made any attempt to advise Teall or any other employee in the unit that they were not required to either become or remain members of the Local or the International so long as they are financial core members even though they were alerted to this by Teall's letter of resignation and his subsequent inquiry about his payroll deductions. It is clear that the Union here is the exclusive collective-bargaining representative of a unit, the agreement between it and the Employer has a union-security clause requiring "membership" in the Union as a condition of employment, a member of the unit resigned membership in the Union and he objected to the Union's use of his service fee for purposes other than those required by law (for collective bargaining, contract administration, and grievance handling). These criteria were met and the Union's continued use of Teall's dues for purposes other than those enumerated, violates Section 8(b)(1)(A) and (2). I also conclude that once a unit employee resigns and voices his objection, the union must establish a *Beck* procedure, notify the objecting nonmember of his rights under *Beck* and cease collecting any fee from that person until it has established that the fee is being used exclusively for purposes permitted by *Beck*. If, as here, the union fails to establish an appropriate procedure and give the employee notice, it breaches its duty of fair representation and violates Section 8(b)(1)(A). If the union continues to collect its full dues as the service fee without establishing that the service fee is being used exclusively for representational purposes, it additionally violates Section 8(b)(2) of the Act.

Under these circumstances, I find that the Respondents have breached their duty of fair representation and I find that they are shown to have violated Section 8(b)(1)(A) and (2) of the Act, as alleged.

The Respondents also attempted to present evidence at the hearing that Teall was "illegally" motivated in withdrawing from the Respondents, and they contend that if Teall was motivated by the desire to become a free rider in attempting to resign his union membership and assert *Beck* rights, then contrary to the General Counsel's contentions, Respondents had no fiduciary obligation to notify him that the term "members in good standing" found in the union-security clause of the pertinent collective-bargaining agreement meant only the payment of dues and fees.

As pointed out by the General Counsel, the purpose of the Act is to insure that employees are free to choose whether or not they wish to become or remain members of a union. Motive is irrelevant. An employee has the right to join or resign full union membership for good cause, no cause or a cause that some may view as morally indefensible. Teall's rights and the rights of all other employees covered by the Act, to become or refrain from becoming a member of a union, are found in Section 7 of the Act and are rights that are absolute and not conditioned upon motivation.

While at some future time the Board may find special circumstances (such as motivation that is tied in with an illegal effort on the part of an employer to decertify a union or an illegal conspiracy on the part of some group to interfere with a union's rights as a collective-bargaining representative), the conjecture here that Teall merely wanted to be a "free rider'' fails to provide any valid reason to limit Teall's rights in this case.

Although the Respondents on brief also request that this Court's denial of enforcement of their subpoena of possible records from Teall that could be indicative of such a "free rider" motive be reversed, that request is denied for the reasons noted above.

Otherwise, I find no basis for finding (as urged by the Charging Party's representative), that the union-security clause itself is per se invalid, see the *Paramax* decision, supra.

CONCLUSIONS OF LAW

1. Respondents United Paperworkers International Union, AFL–CIO, CLC and its Local Union No. 987 are a labor organization within the meaning of Section 2(5) of its Act and have entered into and maintain a collective-bargaining agreement with the Employer, Sun Chemical Corporation of Michigan, that requires employees to become and remain members in good standing in the Union.

2. By refusing to acknowledge Thomas Henry Teall's resignation from membership in Respondents, failing and refusing to give him notice of his rights and information necessary and relevant for his exercise of his rights under *CWA v. Beck,* 487 U.S. 735 (1988), and by failing to advise Teall and all other employees in the unit that they are not required to become or remain members of the Respondent as long as they are financial core members the Respondents have violated Section 8(b)(1)(A) of the Act.

3. By continuing to collect and use Teall's full service fees without giving the appropriate *Beck* notice and by using his service fee for purposes not germane to their role as the exclusive collective-bargaining representative, Respondents have violated Section 8(b)(1)(A) and (2) of the Act.

4. The union-security clause is not per se unlawful.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find it necessary to order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondents be ordered to notify each unit employee, in writing, of the employee's *Beck* rights. Nothing here shall preclude the Respondents from negotiating a modification to the union-security provision with Sun Chemical Corporation of Michigan which unambiguously apprises unit employees of their lawful union-security obligations.

The Respondents also shall be required to establish an appropriate service fee for financial core membership consistent with the *Beck* decision and to acknowledge in writing Thomas Henry Teall's resignation. And, because the Respondents are shown to have willfully refused to acknowledge Teall's resignation while at the same time failing to establish an appropriate financial core service fee and continuing to wrongfully collect his full membership dues, in breach of Respondents' duties of fair representation, the Respondents have thereby failed to allow the computation of any accurate service fee amount and, accordingly, as the wrongdoer, Respondents shall be held accountable for the full amount of dues collected until such time as they toll their accountability by establishing an appropriate fee and apply it to Teall's core membership status. Accordingly, Respondents shall refund the full amount of dues collected from Thomas Henry Teall since his resignation on March 1, 1993, until the tolling of this responsibility by the action required above, with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]